

No. 9(182-6Lab./478.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s Rewari Textiles Pvt. Ltd., Delhi Road, Rewari.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,  
HARYANA, FARIDABAD

Reference No. 342 of 1979

between

WORKMEN (SHOWN IN ANNEXURE A) AND THE MANAGEMENT OF M/S REWARI  
TEXTILES PVT. LTD., DELHI ROAD, REWARI

*Present.—*

Shri S. R. Gupta, for the workmen.

Shri M. P. Gupta, for the management.

#### AWARD

By order No. GG/79/46707, dated 30th October, 1979, the Governor of Haryana referred the following dispute between the management of M/s Rewari Textiles Pvt. Ltd., Delhi Road, Rewari, and its workmen (shown in Annexure A) to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

“Whether the dismissal of 45 workmen showing in Annexure A was justified and in order ? If not, to what relief are they entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 27th March, 1980 :—

- (1) Whether the reference is bad in law on the ground that the conciliation proceedings had not taken place ?
- (2) Whether the reference is bad on the ground that demands were not raised with the management ?
- (3) Whether the reference is bad in respect of Sarvshri Raja Ram, Sher Singh, Madan Paul ?
- (4) Whether the dispute is not an industrial dispute ?
- (5) Whether this Tribunal has no jurisdiction ?
- (6) Whether the claim petition is vague, unreasonable not presented and signed as per law ? If so, to what effect ?
- (7) Whether the dismissal of 45 workmen showing in Annexure A was justified and in order ? If not, to what relief are they entitled ?

The management examined Shri Rattan Lal, Clerk, office of the Labour Officer, Gurgaon as MW-1, Shri A. D. Kolhatkar as MW-2, Shri Gopal Krishan, Ex-Manager as MW-3 and the workman examined Shri Madan Paul as WW-1, Shri Mittar Sain as WW-2, Shri Raja Ram as WW-3. Shri Inder Singh as WW-4, Shri Rajinder Singh as WW-5, Shri Sher Singh as WW-6, Shri Rattan Lal as WW-7 and Shri S. L. Sharma, Labour Officer as WW-8. Arguments were heard. I now give my finding inssuewise :—

*Issue No. 1.*—WW-1 stated that in the file of the Labour Office a demand notice dated 29th October, 1979 was received but the same was subsequently withdrawn by applications dated 5th November, 1979 by the General Secretary of the union. A letter dated 9th November, 1979 was sent to the General Secretary in confirmation of his withdrawal. No failure report of these two demand notices were sent to the Labour Commissioner Haryana. In cross-examination he admitted failure report copy Ex. W-2 sent to the Government in the case of Shri Shiv Taj Singh. WW-8 Shri S. L. Sharma, Labour Officer stated that he has submitted conciliation report in respect of Shri Raja Ram, Sher Singh and Shri Madan Paul, copies are Ex. WW-6/1, WW-3/3 and WW-7/1t. He further stated that he recollects that the management had dismissed about 100 workers during lockout. Conciliation meetings were held and cases were referred for adjudication. Demand notices were received in this office. Conciliation meetings were held and reports sent to the Government.

The Labour Officer categorically stated that he held conciliation meetings and submitted a report to the Government. Moreover the contention of the learned representative of the management that a reference was had on the ground of absence of conciliation meetings is also without any force. It has been held in a number of rulings that the Government had ample powers under section 10 of the Industrial Disputes Act, to refer a dispute for adjudication at any time. Conciliation meetings are provided under section 12 of the Industrial Disputes Act but that is a procedural section and section 10 is not subordinate to that section in any way (1981 II LLJ page 102). Therefore, this issue is decided against the management.

**Issue No. 3.**—WW-1 stated that according to the Labour Office file demand notices were received in the Labour Office but the same were subsequently withdrawn by the General Secretary Textile Workers Union by his letter date 5th November, 1979. WW-1 stated that the union had served a demand notice about non payment of Minimum Wages to the workmen by the management. The management started victimising the workmen and there was lockout for which a complaint was made to the Labour Office. Management was to hold and finally a settlement was arrived at. The management did not allow 45 workmen to join their duties after the lockout. Complaints were made and demand raised and the present reference was made. WW-2 corroborated the statement about lockout and meetings by the Labour Officer. WW-8 Shri S.L. Sharma, Labour Officer stated that demand notice in respect of 86 workmen of M/s. R-war Textile Pvt. Ltd. was received in his office. Conciliation meetings on the demand notice were held and report was sent to the Government.

I find from the evidence that the Conciliation Officer held meetings during lock-out. He has categorically admitted having held conciliation meetings in respect of the dismissed workmen on the demand of dismissal. As regards the formal demand notice and its subsequent withdrawal, I find that in the letter of withdrawal the General Secretary stated that the reference had already been made and there was no necessity of the present demand notice. The workmen produced copy of written statement Ex. WW-6/2 which is dated 25th October, 1979 in which there is a reference in para 5 about the demand of dismissed workmen. This written statement was filed before the Conciliation Officer, Gurgaon. The contention of the learned representative of the management was that the reference order was dated 30th October, 1979 whereas demand notices were dated 24th October, 1979 and 29th October, 1979, therefore reference was not made on these demand notices rather demand notices had been withdrawn by the General Secretary. According to the record produced I find that the factory was under labour trouble and there had been strike and lockout. There might have been demand of non-employment of the workmen for which written statement Ex. WW-6/2 was given on behalf of the management. Reliance was placed by the management on 1968 I LLJ page 834 but I find that this decision was referred before the Hon'ble the Supreme Court of India in case cited as 1978 ILLJ page 484 and the Hon'ble Judges held that the Act nowhere contemplates that a dispute would come into existence in any particular or specified or prescribed manner. For coming into existence of an industrial dispute a written demand is not a sine qua non unless of course in the case of a public utility service because S-22 forbids going on strike without giving a strike notice.

"To read into the definition of "industrial dispute" the requirement of a written demand for bringing into existence an industrial dispute would tantamount to re-writing the section". (1978 ILLJ page 484). This issue is also decided against the management.

**Issue No. 3.**—MW 1. proved failure report Exhibit W-2 and letters Exhibit W-3, W-4 and W-5. WW-1 Shri Madan Paul stated that he was removed from service in the 2nd week of May, 1979 but he was reinstated,—vide settlement Exhibit WW-1/30. He was again discharged on 23rd July, 1979. He submitted his comments in respect of demand notice Exhibit WW-1/31 to the Labour Officer. In cross examination he admitted that documents Exhibit WW-1/30, WW-1/11, WW-1/9 and WW-1/3 bear his signatures. He further deposed that his case was sponsored by the union but the union did not pass any resolution for sponsoring his case, nor any resolution was passed for sponsoring cases of Shri Raja Ram and Shri Sher Singh. He had made a complaint about his termination verbally to the union. Copy of the demand notice was Exhibit MW-3/9. This was given by him for his termination. He further stated that he was elected office bearer of the union and was Propaganda Secretary. WW-3 Shri Raja Ram deposed that he was a member of the union. He had submitted demand notice copy Exhibit MW-3/8 to the management. Conciliation proceedings on the demand notice were held. Copy of his comments was Exhibit WW-3/1. Copy of the comments of the management was Exhibit MW-3/2 and copy of conciliation report Exhibit MW-3/3. WW-6 Shri Sher Singh stated that his services were terminated because he was insisting for revised minimum wages. He served demand notice Exhibit MW-3/10 on the management. Report of the Conciliation Officer was Exhibit WW-6/1, copy of comments submitted by the management was Exhibit WW-6/2.

I have gone through the demand notice Exhibit MW 3/3, MW-3/8, MW-3/10 in respect of S/Shri Raja Ram, Madan Paul and Sher Singh respectively. These demand notices were separately written and are dated 31st July, 1979. The workman claimed reinstatement in each of the demand notice individually. Conciliation report was also separately sent by the Conciliation Officer. Exhibit WW-7/1 was copy of report in respect of Shri Madan Paul. It is admitted by Shri Madan Paul the concerned workman who appeared as WW-1 that no resolution was passed by the union to sponsor his dispute, nor any such resolution in respect of other two workmen was passed. From the very start the cases were individually taken up by the concerned workmen to the management and conciliation officer. There was no community of interest in their cases by other workmen to make the reference a collective industrial dispute. Their disputes in the present reference is not according to law. The reference should have been made under section 2-A of the I.D. Act separately. Therefore, this issue is decided in favour of the management.

*Issue No. 4.* WW-1 stated that the workmen insisted for payment of increase in wages. The employer by way of retaliation stopped its power panel on 1-8-79 and complained to the Labour Inspector that the workmen were not working on their machines. The workmen made complaint to the Labour Inspector for non payment of wages and about their harassment. Meetings were held by the Labour Department Authorities and Deputy Commissioner. The management declared lockout from 5th August, 1979 which was lifted on 25th September, 1979 on the intervention of authorities. The management did not allow duty to 45 workmen. The workmen raised demands and made complaint on the basis of which the present reference was made. All the workmen were victimised for their trade union activities. In cross examination he stated that the workmen had given authority to the General Secretary for raising the dispute. A meeting of the union was held in which it was discussed that in case the management does not take them back on duty their cases be taken up by the union. It was recorded in the proceeding book which he had not brought. WW-2 corroborated the statement of WW-1 and stated that the General Secretary Shri Shiv Taj Singh was removed from the union for his anti union activities.

The main thrust of argument of the representative of the management was that the present dispute was referred under section 10 (1) (d) of the I.D. Act was a collective dispute. He referred 1976 I LLJ page 283, AIR 1966 Punjab page 173, PLR 1966 page 103, AIR 1981 (SC.) page 1526, and 1975 Supreme Court cases L&S page 483.

The Industrial Dispute is designed in section 2 (K) of the I.D. Act which runs thus :—

“industrial dispute” means any dispute or difference between employers and employees or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any persons ;

The present dispute is a dispute concerning non-employment of workman but according to scheme of the I.D. Act there should be an element of collective bargaining an essential feature of trade union movement and in industrial adjudication. A cause of individual workman could not be an industrial dispute if it was not sponsored collectively by his fellow workmen till section 2-A was inserted in the I.D. Act. I find that to overcome the difficulties in case of dismissal or discharge etc. of an individual workman whether a considerable number of his co-workmen did not support his cause, the legislaure added the following section 2-A in the Act :—

“Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute of difference between that workman and his employer connected with, or arising out of, such discharge, dismissal retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union or workmen is party to the dispute.”

In fact section 2-A is supplement to section 2 (K) as an individual dispute was considered as an industrial dispute if the same was about discharge, dismissal, retrenchment or termination and it was not necessary to be supported by other workmen of the union. In 1966 PLR page 193 and AIR 1966 Punjab page 173 reliance was placed on the case *Bombay Union of Journalist versus. The “Hindu” Bombay and others.* In which case it was held that other employees under the management supported the cause of the aggrieved workmen. In 1975 Supreme Court cases L&S page 483 it is held as under :—

“The State Government will have jurisdiction to make a reference only if there is an industrial dispute. As there was no industrial dispute, the reference made by the State Government has been rightly held by the High Court to be incompetent.

In 1975, I LLJ page 293 it is held :—

“Section 2-A makes it clear that when individual dispute is not sponsored by other workmen or espoused by the union or workmen, even then it would be deemed to be an industrial dispute within the meaning of the Act. In spite of the said amendment which brings an individual dispute within the scope of the Act, it has not made any difference on the principles as to what would constitute an industrial dispute within the meaning of the Industrial Disputes Act. If it is an individual it must be raised by him and reference may be made in due course for adjudication. If a group of workmen raise a dispute that can also constitute an industrial dispute within the meaning of the Act, such may be referred to the Tribunal in due course. But when the dispute is sponsored or espoused by a union, it seems to have been uniformly held by the judicial decisions that when the authority of the union is challenged by the employer, it must be proved that the union has been duly authorised either by a resolution by its members or otherwise that it has the authority to represent the workmen whose cause it is espousing.”

The learned representative for the management also contended that no demand notice was sent by the Government with the present reference because there was none and contended that the claim statement was not filed by the union rather individual workman filed his own claim statements. Letter of authority was also given individually. By this argument he made a point that there was never a community of interest of the workmen in sponsoring and contesting the cases of the workmen. The present reference was a reference under section 10 of the Industrial Disputes Act and not under section 2-A. No positive evidence in the form of a resolution or otherwise was produced by the workmen to prove sponsoring the cause of the dismissed workmen to make the same an industrial dispute. In the present case the reference is about termination of services of a number of workmen and their cases were referred in one single reference order. Therefore, it was necessary to prove espousal by substantial number of workmen of the Industry which fact was not brought on the file to make it an industrial dispute. Therefore, this issue is decided in favour of the management.

It will be unnecessary to decide other issues because reference fails on issue No. 4.

While answering the reference I give my award that the case of the workmen fails on issue No. 4 and the workmen are not entitled to any relief in this reference. I order accordingly.

Dated 30th December, 1981

M.C. BHARDWAJ,  
Presiding officer,  
Industrial Tribunal Haryana Faridabad.

No. 1169 dated 31st December, 1981

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,  
Presiding Officer,  
Industrial Tribunal, Haryana, Faridabad.

No. 9(1)82-6 Lab/625.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Haryana Roadways, Gurgaon.

IN THE COURT OF HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,  
HARYANA, FARIDABAD

Reference No. 128 of 1981

between

SHRI MAHABIR SINGH, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S  
HARYANA ROADWAYS, GURGAON.

Shri S.K. Goswami, for the workman.

Shri K.L. Piplani, for the respondent.

AWARD

This reference No. 128 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—*vid.* his order No. ID/GGN/4/81/16766, dated 25th March, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Mahabir Singh, workman and the respondent management of M/s Haryana Roadways, Gurgaon. The terms of the reference was :—

Whether the termination of services of Shri Mahabir Singh was justified and in order ? If not, to what relief is he entitled ?

Notice were issued to the parties, on receiving this reference. The parties appeared and filed their pleadings. The case of the workman is that he joined the service as Conductor on 7th April, 1972 and the Charge-sheet issued to him was wrong, incorrect and false of 6th December, 1977. The order of termination dated 13th June, 1979 is illegal and mala fide for the victimisation. No proper enquiry was conducted against the claimant. The principles of natural justice were totally violated. It was all the enmity formalities in the enquiry. Inspector Shri Madan Lal did not appear and deprived the claimant the right to cross examine him. The claimant was held guilty on the sole evidence of Shri Laxmi Chand Sethi. The findings of the enquiry officer were wrong and false. The punishing Authority has acted illegally in terminating the services of the claimant, on believing wrong evidence of the respondent. The enquiry facts were never appreciated. The statements of the passengers from whom the claimant alleged to receive the fair were never produced in the enquiry by the Department.

No opportunity of personal hearing was given and no proper legal show cause notice was given. So the termination was illegal and wrong, invalid and deserved to be quashed and he claimant be reinstated with full back wages and continuity of service.

The case of the respondent according to the written statement is that the chargesheet dated 25th January, 1978 was issued to the claimant, and reply to the same was received by the authority. The Traffic Manager, Gurgaon was appointed as enquiry officer to hold the regular enquiry. The workman fully participated in the enquiry and full opportunity to defend himself was given. The workman was found guilty and show-cause notice was issued to him. After receiving the reply of the show-cause notice the claimant was given an opportunity of hearing and thereafter his services were terminated on 13th June, 1979. The enquiry was fair and proper and the punishing authority fully applied his mind to the fact of this case and it was not necessary to examine the passengers in order to sustain charge. The order of termination was legal and without any prejudice.

On the pleadings of the parties, the following issues were framed :—

1. Whether the enquiry held by the respondent Roadway was in order and not violated the principles of natural justice ? If so, to what effect ?
2. Whether the termination of services of the workman is proper, justified and in order ? If not, to what relief is he entitled ?
3. Relief ?

My findings on issues are as under :—

#### Issue No. 1 :

Issue No. 1 is whether the enquiry was fair and proper in the eye of law. On this issue the representative of the respondent argued that on 6th December, 1977, the claimant was on duty on Bus No. HRC-6141 from Hodel to Faridabad which was checked by Shri Madan Lal and Laxmi Chand Sethi, Inspector Traffic at Palwal bus stand and during their checking they found six passengers without tickets and according to the passengers they have paid Re. 1.50 P. per passenger to the conductor from Banchari to Palwal. In this way the Conductor made an embezzlement of Government money of Rs. 9. The Inspector took the un-punched tickets from the conductor which is with the enquiry report. On this checking of embezzlement, the chargesheet Exhibit M-1 and M-2 were issued to the claimant and the claimant replied the same as Exhibit M-3. After going through this reply and the chargesheet, the authority found it un-satisfactory and a domestic enquiry was constituted to enquire the matter and the Traffic Manager, Gurgaon, was appointed as enquiry officer,—vide Exhibit M-4. The enquiry officer held the enquiry,—vide Exhibit M-9 in which the one Inspector Sri Laxmi Chand Sethi, came in the enquiry before the enquiry officer and stated according to his report against the claimant about the fraud, embezzlement on 6th December, 1977 by the claimant. The claimant cross-examined the Inspector and asked about eight or the ten questions and he was given the opportunity to give his own statement, before the enquiry officer on 23rd September, 1979 and stated that he did not want to give any defence in the enquiry. After this statement the enquiry officer prepared the enquiry report which is Exhibit M-11 and after giving the enquiry report the punishing authority gave the opportunity to the claimant for personal hearing,—vide Exhibit M-7. After hearing the claimant personally the punishing authority made the final order Exhibit M-8. The show-cause notice was also given to the claimant which is Exhibit M-5., and the claimant replied the same,—vide Exhibit M-6. The respondent completed the whole procedure of enquiry according to the cannon of the natural justice and when the claimant was found guilty of embezzlement of Rs. 9 he was rightly terminated by the punishing authority. He further argued that the workman was terminated on 13th June, 1979 and the demand notice was given on 10th November, 1980 after a lapse of more than one year which cannot be sustainable at this stage. The claimant has written no allegation against the enquiry officer or the enquiry proceedings. No specific allegation is made every in his own statement and no proof by any way. He further argued that the workman was employed in the year 1972 and up to his suspension in the year 1978 he was held guilty of so many charges on which his increments were stopped, his service was censured and his security was forfeited so many times. Before this charge he was punished 35 times and the claimant was not fit for service and he was habitual defaulter in this manner. So the enquiry was conducted formally with the rules and principles of natural justice.

The representative of the workman argued that the claimant was on duty on a bus No. HRC-6141 which was for Hodel to Faridabad. The claimant was checked by the said Inspector Shri Laxmi Chand and Madan Lal. There were six collective passengers who took the tickets from the conductor claimant after paying the money. But one of the passengers who was having those tickets was dropped at Petrol Pump some distance behind the bus stand, Palwal, which was also told to the Inspector, but the Inspector did not agree with the statement of the passengers and the claimant. The claimant replied the chargesheet in the same manner and he has stated before the enquiry officer in the same tune. The two inspectors checked the claimant but at the enquiry one Inspector Shri Laxmi Chand Sethi has come to give the statement and other was withheld by the respondent and in this way the claimant was deprived of right to cross examine the other inspector. The enquiry officer should have called the passengers concerned from whom the claimant has taken the money as alleged. The cash of the claimant was not checked when he was checked at the Palwal bus stand which could clear the position of the workman. The Inspector denied the same before the enquiry officer that he did not check the cash of the claimant at the time of checking which was very important matter for this allegation for fraud and embezzlement.

The enquiry officer did not provide full opportunity to the claimant to defend himself. He further argued that in the show cause notice Exhibit M-5 the respondent has shown 35 other allegations on which the claimant has already been punished and those were illegally shown in the show cause notice to prejudice the punishing authority. The allegation shown in the show cause notice Exhibit M-5 were already finised by way of punishment given to the claimant and those were not included in the chargesheet given to the claimant. In Exhibit M-1 and M-2 this addition of charges in the show-cause notice is violation of principles of natural justice. The authority should have confined to the charges given to the claimant in the chargesheet which is a violation of natural justice. The claimant was not given the copies of the findings of the enquiry officer after finishing of the enquiry which is must under the law. The enquiry officer submitted his report very late shows that the report was wrong. The enquiry proceedings were not written by the enquiry officer himself and it was written by the clerk, who has not signed the enquiry proceedings which is also gainst the natural justice.

After hearing the arguments of both the side, and carefully going through the whole file of the enquiry proceedings of the enquiry officer and arguments put forward by the representative of the respondent I am of the view that the enquiry was proper and fair because ever opportunity was given to the workman in the enquiry according to the rule of enquiry and the claimant had not objected the properness of enquiry or conduct of the enquiry officer at any stage which show that the enquiry was proper and fair. So this issue is decided in favour of the respondent and against the workman.

Issue No. 2.—Issue No. 2 is as per reference ? )

After deciding issue No. 1 in favour of the respondent, there is nothing left to discuss in this issue. The claimant was terminated on 13th June, 1979 and he raised this demand notice on 10th November, 1980 after a lapse of more than one year shows the interest and force in this case. The department had punished the workman 35 times before this enquiry and his 45 increments were stopped, his service coesfured and his security was forfeited so many time on fraud and embeazlement. So such persons are not for duty and the respondent had rightly terminated the service of the workman in view of all the circumstances. So the workman is not entitled for any relief under the above circumstances.

This be read in answer to this reference.

The 6th January, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,  
Labour Court, Haryana,  
Faridabad.

Endorsement No. 86., dated 7th January, 1982.

Forwarded (four copies) to the Commissioner, and Secretary to Government Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer, Labour Court,  
Haryana, Faridabad

No. 9(1)82-6Lab.626.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s Haryana Agro-Industries Corporation Ltd., Dozer Unit, Gurgaon.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 44 & 45 of 1981

between

SARVSHRI HAWA SINGH AND MOHINDER SINGH, WORKMEN AND THE RESPONDENT  
MANAGEMENT OF M/S HARYANA AGRO-INDUSTRIES CORPORATION  
LIMITED, DOZER UNIT, GURGAON

Presents :—

Shri S. K. Goswami, for the workmen.

Shri Y. P. Gupta, for the respondent management.

## AWARD

These references No. 44 and 45 of 1981 have been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/GGN/87-80/3434, dated 21st January, 1981 and ID/GGN/85-80/3428, dated 21st January, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Sarvshri Hawa Singh and Mohinder Singh, workmen and the respondent management of M/s Haryana Agro-Industries Corporation Limited, Dozer Unit, Gurgaon. The terms of the references was :—

Whether the termination of services of Shri Hawa Singh and Mohinder Singh were justified and in order? If not, to what relief are they entitled?

After receiving these references notices were served on the parties. The parties appeared and filed their pleadings. The case of the workmen according to their demand notice and rejoinder is that the workman Shri Hawa Singh joined his service on 23rd May, 1979 and his services were terminated on 1st August, 1980. His monthly salary were Rs. 360. Shri Mohinder Singh, workman joined his services on 21st June, 1979 and was terminated his service on 1st August, 1980. His wages were Rs. 270 per month. The workmen were permanent employees and terminated without any notice or enquiry. The workmen were working on monthly payment and the termination is illegal, so that the workmen are entitled for their reinstatement with full back wages and continuity of service.

The case of the respondent according to their written statement is that the disputes raised by the workmen is not an industrial dispute under section 2-A of the Industrial Disputes Act. So the references are bad in law. The workmen were engaged as Tractor Operator and helper on casual basis on daily wages, so they have no right or lien on the posts. The workmen were drawing daily wages of Rs. 12 at the time of termination of service. The workmen were negligent in the discharge of their duties. So the references may be dismissed.

On the pleadings of the parties, the following issues were framed :—

- (1) Whether the termination of services of the workmen are proper, justified and in order? If not, to what relief are they entitled?
- (2) Relief?

My findings on the issues is as under .—

Issue No. 1.—The representative of the respondent argued on this issue that the workmen were employed on casual basis/*ad hoc* basis and so no appointment letter was issued to the workman, and was paid according to daily wages at the rate of Rs. 12 per day at the time of termination. So the daily wages workmen are not entitled to any relief under the Industrial Dispute Act. The copies of the attendance register Exhibit M-1 to M-13 clears the position of these workmen from July, 1979 to July, 1980. These workmen were appointed on *ad hoc* basis because the permanent employees are taken from advertisement by the Head Office. No appointment letter was given to these workmen as the appointment letter is given to the permanent employees. The Corporation maintained two registers one for the permanent employee and other for the *ad hoc* and daily wages employees. Exhibit M-1 to M-13 are the copies of the daily wages register. The workmen were paid according to their attendance and not on the monthly scale basis. So the temporary and casual workmen has not right or lien of service and they were rightly terminated. The representative of the workmen argued that the workmen joined their services in the month of May and June, 1979 and continued upto 1st August, 1980. and completed more than 240 days of service and became an permanent employee under section 25-B of the Industrial Disputes Act, 1947. The letter Exhibit M-2 from the Special Project Officer to the Managing Director Haryana Agro-Industries Corporation, clears that these workmen had completed 240 days according to the Industrial Disputes Act. These letters also clears and respondent has admitted that they have working regularly and recommended for regularisation of the service of these workmen. He further argued that the respondent also sent one letter to the Managing Director, dated 7th June, 1980 mentioned as Exhibit W-2 for the same. He further argued that Exhibit W-1 from Managing Director, Haryana Agro Industries Corporation to the General Manager of all the Plants, dated 22nd November, 1979, clears the position that meeting held on 30th October, 1979 decided that all those employees working in the various plants/units who have put their continuous service in terms of 25-B of the Industrial Disputes Act, i.e., 240 days service in a year be regularised for all the purposes and such daily wages rated employees also be granted regular pay scales as are admissible to their counter parts employed on regular basis. These orders will take effect from 30th October, 1979. This letter clears that the workmen were not on *ad hoc* and daily wages and they are regular employees and the General Manager did not provide the facilities according to the spirit of this letter. The workmen as WW-1 stated that they were working since 22nd May, 1979 and 21st June, 1979 respectively as Tractor Operator and helper and completed more than 240 days and they were terminated because the respondent one to accommodate their own person on their place. He further argued that Shri A. N. Gill, Assistant Engineer has come as MW-2 and admitted in his cross-examination that still 40 or 50 workmen are working with them on daily wages. When 50 persons are working on daily wages with the respondent and then what was the reason to remove the service of the workmen. It is clear that they were removed to accommodate their person on their place, and the termination of the workmen was illegal and without any jurisdiction.

After hearing the arguments of both the parties, I am of the view that when the work is on and other fifty persons are working with the respondent as admitted by the respondent MW-2 in his cross-examination and the letter Exhibit W-1 and W-2 clear the whole position that the workmen were not on casual basis when they completed 240 days which is mentioned in Exhibit W-1 and given sanction to regular such persons, services and still the incharge of the unit send the letters to the Director as Exhibit W-2. When the Board of Directors have passed in the meeting, dated 30th October, 1979 to regular such person. Then the services of these workmen should have taken according to this letter Exhibit W-1 and they be treated as regular employees and not as *adhaoc* and casual employees. The termination of these claimants after a continuous service and without any cause or reason is not justified and proper and the workman are entitled for their reinstatement with full back wages continuous service. This be read in answer to this reference.

Dated, the 6th January, 1982.

HARI SINGH KAUSHIK,  
Presiding Officer,  
Labour Court, Haryana,  
Faridabad.

Endst. No. 85, dated 7th January, 1982.

Forwarded (four copies) to the Commissioner, and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,  
Presiding Officer,  
Labour Court, Haryana,  
Faridabad.

No. 9(1)-82-6Lab/832.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Sonapat Engineering works, Industrial Estate, Sonapat:—

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT HARYANA  
ROHTAK

Reference No. 20 of 80

Between

Shri Karan Singh, workman and the management of M/s. Sonapat Engineering Works, Industrial Estate Sonapat.

Present.— Shri Ram Sarup Kakria for the workman.  
No one for the management.

### AWARD

This reference has been referred to this court by the Hon'ble Governor,—vide his order No. ID/SPT/150-79/3647, dated 21st January, 1980 under section 10(c) of the I.D. Act for adjudication of the dispute existing between Shri Karan Singh, workman and the management of M/s. The Sonapat Engineering Works, Sonapat. The term of the reference was:

"Whether the termination of services of Shri Karan Singh was justified and in order? If not to what relief is he entitled?"

On the receipt of the order of reference notices as usual were sent to the parties. The parties appeared in response to the notices through their authorised representatives. The workman filed his statement of claim on 7th April, 1980. The management obtained six adjournments for filing the written statement and filed the same on 14th October, 1980. The workman filed his rejoinder on 9th December, 1980 and the case as per the term of reference, was framed on the basis of the pleas of the parties. The management was asked to lead their evidence on 8th January, 1981. The management obtained six adjournments for the production of their evidence but they failed to produce the same. On 22nd September, 1981 the authorised representative of the management Shri Kanwal Singh made a statement at the bar that the management did not contact him despite his intimation to them. He withdrew himself from the proceedings stating further that he had no instruction from the management. I closed the case of the management presuming that the management was not interested and proceeded *ex parte* against the management. The *ex parte* order was set aside on 6th November, 1981 on payment of Rs. 20 as cost and the case was fixed for evidence of the management on 6th November, 1981 at Badli Garh instead of 8th January, 1981.



1982 inconspicuously with the representatives of the parties. On 16th November, 1981 the management representative Shri Kanwal Singh raised objection that the case was not fixed for to-day and change in the date was not made in his presence. He admitted that he was called on the previous date of hearing and was enquired whether he was appearing in other cases on 16th November, 1981 at Bahadurgarh. The objection of the management representative was without any basis and could not be connected and from the previous conduct of the management and its representative it could well be judged that Shri Kanwal Singh was engaged only to delay the proceedings. Shri Kanwal Singh was asked to file his letter of authority on the previous date of hearing as per his own statement that he had no instruction from the management but he failed to file the same. The management was again proceeded *ex-parte* on 16th November, 1981 and the case was fixed for *ex-parte* evidence of the workman on 3rd December, 1981. The management representative presented an application for setting aside the *ex-parte* order dated 16th November, 1981 on the same ground, that the management had no knowledge of the change of the date to which I was not prepared to accept as true and the application was rejected.

The workman himself appeared as his witness who deposed that he was in the employment of the respondent for the last about four and a half year. The management terminated his services on 11th June, 1979. During conciliation meetings on 25th June, 1979 the management agreed to take him back on duty but when he reported for duty the next day he was rebuked and was not taken on duty. He has further stated that the management did not give him any notice nor any charge-sheet was issued nor he was paid any retrenchment compensation.

The management did not care to defend themselves against the demand of the workman. I have no reason to disbelieve the un rebutted *ex-parte* statement of the workman made on oath. Relying on his statement I hold that the management terminated the services of the workman without following the mandatory provisions of section 25F. The management has not come forward to prove their allegation of wilful absence thereby abandonment of service on the part of the workman. The termination is neither justified nor in order. The workman is entitled to reinstatement with continuity of service and with full back wages. The reference is answered and returned accordingly.

The 9th January, 1982.

BANWARI LAL DALAL,  
Presiding Officer,  
Labour Court, Haryana, Rohtak.

Endorsement No.....Dated.....

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,  
Presiding Officer,  
Labour Court, Haryana,  
Rohtak.

No. 9(182-6 Lab./961.—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Good year India Ltd., Ballabgarh.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,  
HARYANA, FARIDABAD

Reference No. 177 of 1976

between

SHRI SAUDAN SINGH WORKMAN AND THE MANAGEMENT OF M/S GOODYEAR INDIA  
LTD., BALLABGARH

Present—

Sri S.R. Gupta for the workman.  
Sri O.P. Malhotra/Sri Sit Pal for the management.

AWARD

By order No.ID/FD/19-C-76/32882, dated 2nd September, 1976 the Governor of Haryana referred following dispute between the management of M/s Goodyear India Ltd., Ballabgarh and its workman Shri Saudan Singh, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the dismissal of Shri Saudan Singh was justified and in order? If not, to what relief is he entitled?

On receipt of the order of reference, notices were issued to the parties, who appeared and filed their pleadings. On the pleadings of the parties the following preliminary issues were framed by my learned predecessor on 29th April, 1977 :—

- (1) Whether the dispute under reference is hit by settlement dated 16th July, 1973 ?
- (2) Whether the domestic enquiry is vitiated and is not in accordance with principles of natural justice?
- (3) Whether the workman raised the demand first on the management at the appropriate time ? If not, to what effect ?
- (4) If issue No. 1 is found against the management, and the domestic enquiry is found proper and not vitiated, whether the workman is barred or estopped from agitating or raising the dispute under reference ?

The workman examined Shri V.K. Sachar, President Goodyear Employees Union as WW-1 and the management Shri R.H. Aiyar, Manager Financial Licence as MW-1 and Shri K.P. Agrawal as MW-2. Arguments were heard. I now give my finding issue-wise :—

*Issue No. 1.*—WW-1 stated that he was Secretary of the union in the year 1974. Letter Ex. W-1 was issued by the General Secretary of the union to the management. He identified the signatures of the General Secretary. He had personally gone to deliver the letter to the management and some it was delivered to Shri R.H. Aiyar. Ex. W-1 contain signature of Shri R.H. Aiyar in token of its receipt. In cross examination he stated that the union had passed a verbal resolution in support of Ex. W-1. The workmen of out going first shift at about 4-30 p.m. and out going 3rd shift at about 8-30 p.m. resolved on 3rd April, 1974 in this behalf. The workmen of outgoing 2nd shift had resolved on 4th at 12-30 a.m. Agenda was not circulated by writing in the register but by writing on the notice board. It was no where in writing that Shri Vajpayee General Secretary was authorised to issue letter Ex. W-1. Shri Vajpayee was still working in the factory and was in the union. He denied the suggestion that the notice was not delivered to the management and resolution was not passed. He admitted it as correct that agreement dated 16th July, 1973 was in conciliation proceeding and the settlement was at page 179 of enquiry file.

The learned representative for the management argued that settlement Ex. M-50 was a settlement under section 12(3) of the Industrial Disputes Act and was binding upon the workman concerned who was also a signatory to the settlement along with other office holders of the union. He further argued that the settlement could not be terminated under law. He cited 1976 Lab. I.C. page 1083 and 1964 II LLJ page 407. On the other hand the learned representative for the workman argued that the settlement has void as the same being against law. The workman had a right to agitate his dismissal according to the Industrial Disputes Act.

I have gone through the memorandum of settlement which is under section 12(3) of the I.D. Act. It was arrived at in the presence of the Deputy Labour Commissioner and Conciliation Officer. On behalf of the workman signatories were six in number including the President, Vice President, Secretary and Sri Saudan Singh the concerned workman who signed as Joint Secretary. I find from the contents of the settlement that there was some dispute about slow down against some workmen, lay off, compensation, strike in two shifts on July 4th and in one shift on 5th July, 1973. It is also into settlement that the management will lift lockout from July 17th and July 19th as given in para 5 of the settlement. Clause 2 of the settlement is as under :—

"The cases of Sarvshri Giriraj Singh (Cureman), Saudan Singh and some others are pending domestic enquiry/proceedings with the Management. The Management would be within its rights to take any appropriate action against them and the union/workmen concerned will not agitate or raise on industrial dispute further in the matter".

A settlement was binding on the parties to the dispute according to section 18(3). The contention of the learned representative for the workman was that the settlement was terminated by issuing letter Ex. W-1 to the management. It was into evidence of WW/1 that letter terminating the settlement was delivered to Shri R.H. Aiyar which contention was denied per suggestion to the witness but no question was put to Shri R.H. Aiyar when he appeared as MW-1. Preamble of the Industrial Dispute Act states it an Act to make provision for the investigation and settlement of industrial disputes. According to the scheme of the Act and industrial law an emphasis is laid on settlement of dispute in the course of conciliation proceedings or even otherwise which is given in the language defining settlement in section 2(p) of the Industrial Disputes Act. So much so that a settlement is preferred even after giving an award by the adjudicator in case the parties arrive at a settlement and make a prayer in this behalf to the adjudicator or the State Government. I find that in the present settlement that the factory was under lockout at the time of conciliation proceedings. The union settled some of their disputes with the management and arrived at settlement in lifting of the lockout from the given date. They also settled that they will not raise the dispute in cases of workmen named in the settlement. The concerned workman had a special position in arriving at the settlement because he was an office holder of the union and a signatory to the settlement. I do not find any reason that he could opt out of the settlement stating it to be void or illegal. It was not unlawful to give up one's personal right or cause. Under the scheme of the Act a union of workmen arrive at a settlement with the management on the policy of give and take. They also bind the workman not to raise any dispute involving finances for a number of

years. They also negotiate grade or bonus at a fixed rate and bind themselves not to raise a dispute for another 2-3 years. Therefore, I do not agree with the contention that the settlement was not binding upon the workman. As regards the contention of the learned representative for the workman that the settlement stood terminated, I am of the opinion that they could not resile out of the settlement which was not in the nature of a terminable settlement. Therefore, I decide this issue in favour of the management.

*Issue Nos. 2 to 4.*—As per findings given by me on issue No. 1, these issues needs no decision.

While answering the reference, I give my award that the case of the workman fails on issue No. 1 and the workman is not entitled to any relief.

Dated the 12th January, 1982.

M.C. BHARDWAJ,  
Presiding Officer,  
Industrial Tribunal Haryana, Faridabad.

Endstt. No. 52, dated the 15th January, 1982

Forwarded (four copies) to the Secretary to Government Haryana Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,  
Presiding Officer,  
Industrial Tribunal Haryana, Faridabad.

No. 9(1)82-6Lab./962.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Tul Par Machine and Tool Company, Faridabad.

BEFORE SHRI M. C. BHARDWAJ PRESIDING OFFICER INDUSTRIAL  
TRIBUNAL, HARYANA FARIDABAD

Reference No. 144 of 1978

*Between*

SHRI JOGINDER PAUL 3 WORKMAN AND THE MANAGEMENT OF M/S TUL PAR MACHINE  
AND TOOL COMPANY, SECTOR—6, FARIDABAD

*Presents—*

Shri S.R. Gupta, for the workman.

Shri A.J.S. Chadha, for the management.

AWARD

By order No. ID/FD/3-C-78/24642, dated 30th May, 1978 the Governor of Haryana referred the following dispute between the management of M/s Tul Par Machine and Tool Company, Sector-6, Faridabad and its workman Shri Joginder Paul, to this Tribunal, for adjudication, in exercise of the powers conferred by clause(d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Joginder Paul was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 9th January, 1979 by my learned predecessor.

1. Whether the workman was appointed for a period of two months only ?
2. Whether the workman absented himself from 9th December, 1977 before the expiry of his service tenure ? If so to what effect ?
3. What is the effect of receipt of dues by the workman by way of cheque ?
4. Whether there is no dispute between the parties ?
5. Whether Shri Joginder Paul is not a workman as defined under the I.D. Act ?

6. Whether the workman had resigned on 15th October, 1977 ? If so to what effect ?
7. If issue No. 6 is not proved and issue No. 2 is found against the management whether termination of services of Shri Joginder Pal was justified and in order ?
8. If not to what relief is he entitled ?

The management examined Shri Ram Narain Tulsiani partner as MW-1 and Shrimati Pushpa Sachdev as MW-2 and the workman examined himself as WW-1 and Shri Roop Chand as WW-2. Arguments were heard. I now give my finding issues wise :—

**Issue No. 5.**—MW-1 stated that Shri Joginder Paul was appointed, vide Exhibited M-1 as tool maker at a monthly rate of Rs. 350. His last salary was Rs. 525. He further stated that the workman was re-appointed after resignation as a Master Mechanic. A workman is defined under section 2(s) of the I.D. Act. Under sub clause IV is as under :—

“who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature”.

I find that the management has taken objection under some misconception. The workman was appointed as a tool maker and then a Master Mechanic as alleged by the management. Thus he was a technical or skilled worker. He was not a supervisor. It is established law that a technical or skilled workman remains as such even after he draws wages more than Rs.500. This issue is decided against the management.

**Issues No. 1, 3, 4 and 6.**—MW-1 deposed that the workman resigned on 15th October, 1977, the resignation was accepted forthwith on 10th October, 1977. He gave an application for withdrawal of his resignation. This application was Exhibit M-3. On his request the workman was appointed for two months as Master Mechanic which was accepted by the workman,—vide Exhibite M-1/A. In cross-examination he stated that no separate letter intimating the workman regarding acceptance of the resignation was issued to him. The workman had noted the acceptance order Exhibit M-3. Original resignation letter was taken back by the workman from Shrimati Pushpa when the workman brought his letter withdrawing his resignation. MW-2 stated that office note Exhibit M-3 was in her hand. The workman had given resignation letter to her and She had given office note. The office report was in the hand of Shri K. P. Singh the Works Engineer. Shri Joginder Paul gave application Exhibit M-3. Office note in red circle mark B was written by MW-1. The workman signed at point “Z”. In cross-examination he stated that signature on Exhibit M-3 were hers. When She forwarded the resignation She had attached the same with her forwarding letter. The resignation had been accepted by MW-1 and he had written the word accepted thereon. There were supervisors in the factory but She had not taken report of any supervisor forwarding the resignation to the Manager.

WW-1 the concerned workman stated, that he joined service on 6th May, 1975 as a turner. On 9th December, 1977 he had gone on leave and had given application to the Works Manager. In cross examination he replied that Exhibit M-1 bear his signature at point A and not point B. It bear his signature at point on Ex. M-1/A. He denied the suggestion that he had resigned on 19th October, 1977, nor he had resigned in the year 1975. He denied that his service was for two months from 19th October, 1977. He stated that after 1½ month of demand notice the management had sent a cheque of Rs. 132 with Exhibit W-1 which was replied,—vide Exhibite W-2 under UPC Exhibit W-3 to W-5.

I have carefully gone through the documents produced by the parties and also their oral evidence Ex M-2 is a letter dated 15th October, 1977 to the manager which is as under :—

To  
The Manager,  
Dear Sir,

**Subject.**—Resignation of Mr. Joginder Pal.

I have received a resignation of Mr. Joginder Paul today and forwarded to you for next action

Your faithfully,

(Sd./)— PUSHPA SACHDEVA,

Accepted the same he will serve one month as he has written,

(Sd./)—

Dated 15th October, 1977.

No original resignation was placed on file rather an explanation was given by MW-1 and MW-2 that the same was taken back by the workman in original. It is given that he had withdrawn the resignation,—vide his letter Exhibited which was dated 19th October, 1977 and he was appointed from 19th October, 1977 for two months. The workman denied his signature at point "C" on Exhibit M-3 accepting two months job. By letter Exhibit M-3, I find that workman had resigned his job otherwise there was no question of withdrawal of resignation mentioned in Exhibit M-3. As regards appointment of two months the same is belied by the note on Exhibit M-2 which was in the language of note under the word accepted which is in the hand of MW-1 according to Shrimati Pushpa MW-2. word "he will serve one month as he had written" are significant to note. Because the workman withdrew his resignation after 4 days and he was still working the note of the partner. Further more the management did produce any receipt of payment of 15 days wages or some other outstanding amount paid to the concerned workman after acceptance of his resignation.

As regards making of payment by cross cheque dated 23rd January, 1978 for Rs. 132.64 full and final to the workman,—vide letter Exhibit M-10 of the management the workman informed the management that he had never received payment of his full and final account rather he had asked for his outstanding of the wages for the month of December, 1977. He issue this letter to the management for the reason that letter Exhibit M-10 copy Exhibit W-1 created the impression of sending cheque to the workman as full and final account.

To sum up I find that the workman had resigned on 15th October, 1977 but the same had no affect because he continued in service and the management accepted his withdrawal letter. The appointment of the workman was not for a period of two months. There is no affect of the receipt of dues by the workman by way of cheque and that the dispute between the parties had not ended. I decide these issues accordingly.

**Issue No. 2.**—MW-1 stated that the workman absented from 9th December, 1977 in an unauthorised manner. The workman never came to report for duty. In cross examination he stated that no standing orders were applicable to the factory, nor there were any rules and regulation. M-W-2 deposed that She had brought attendance register. The workman was marked upto 8th December, 1977 there after he was marked absent upto 24th December, 1977 and then it was written "left". Extract of the attendance register was Exhibit M-11.

WW-1 stated that on 9th December, 1977 he had gone on leave and had given application to the Works Engineer who had sanctioned seven days leave to him. He came to join his duty on 16th December, 1977. The management did not take him on duty. He attended gate for 2-3 days. Then he raised the demand notice. In cross examination he replied that no sanction order of leave in writing was given as there was no practice. He denied the suggestion that he absented from 9th December, 1977. WW-2 stated that WW-1 used to work with him. He had given application for leave in December to Shri K. P. Singh in his presence. His leave was sanctioned. In cross examination he denied the suggestion that he deposed falsely due to his freidship with WW-1.

According to the management the workman was absent from duty with effect from 9th December, 1977 whereas the workman in his statement gave that he had gone on leave from 9th December, 1977. When he returned from leave he was not allowed duty by the management. He gave demand notice on 22nd December, 1977. The management has produced Exhibit M-11 copy of attendance register for the month of December 1977 in which the workman was marked absent from 9th December, 1977. He was shown absent upto 24th December, 1977. The management sent letter Exhibit M-7, a call letter to him. This letter was received back undelivered with the remark that at the given address there was none of the addressed name. Another reminder was issued,—vide letter Exhibit M-8 and Exhibit M-9. These were also received back, undelivered with the same remarks., however, on Exhibit M-8 and M-9 the address was incorrect. I find that there was permanent address of the workman on Exhibit M-1 in addition to his local Faridabad address but no letter was sent on the permanent address when Exhibit M-7 was received back undelivered by the management. According to Exhibit M-11 the name was kept upto 24th but the workman submitted his demand notice on 22nd after waiting for 2-3 days continuously at the factory gate. By this evidence I gather that the workman was not absent for all the days shown in Exhibit M-11, however, he might be absent for some days only. This issue is, therefore, decided against the management.

**Issues No. 7 and 8.**—Order of the management giving rise to the dispute is unauthorised absence from duty as given in Exhibit M-4 to M-6. In Exhibit M-4 which was dated 15th December, 1977 it was given that the workman was absent with effect from 9th December, 1977 and should give satisfactory explanation of unauthorised absence. It will be presumed that he was no longer interested in the job and having abandoned the job on account of his absence. His name will be struck off from the attendance register. The same was repeated in Exhibit M-5 dated 21st May, 1977. In Exhibit M-6 which was dated 23rd December, 1977 it was given that with reference to letter dated 15th December, 1977 and 21st December, 1977 it was presumed that he was no longer interested in the service. It was also given that reference to his resignation letter dated 15th October, 1977 he was relieved from duties immediately.

In the document Exhibit M-11 the words 'left' is written against his name. Whereas the plea of abandonment is given in Exhibit M-4 and M-5. These letters were never received by the workman. In Exhibit M-6 the pleas of resignation as well as abandonment are given. As regards the resignation the workman had withdrawn his resignation letter, so much so it was returned to the workman after his submission of his withdrawal application. Therefore it cannot be said that the resignation still subsisted after its withdrawal. As regards the plea of abandonment I find that it was not proved, however striking off name is maintained to retrenchment as held in 1977

Lab. I.C. 1995 (S.C.) "striking of the name of a workman from the rolls by the management is termination of his service. Such termination of service is a retrenchment within the meaning of section 2(00) of the Act. The provision of section 25 (v)(a) the proviso a part and (b) are mandatory and any order of retrenchment in violation of these preemitory conditions precedent is invalid". This provision of law was confirmed by the Supreme Court in *Santosh Gupta Versus. State Bank of Patiala* 1980 11 LLJ page 72. It is admitted fact that no retrenchment compensation was paid to the workman by the management. I, therefore, find the termination nor in order. Consequently he was entitled to the relief of reinstatement with continuity of service and with full back wages. These issues are decided accordingly.

While answering the reference, I give my award that the termination of services of the workman was neither justified nor in order. The workman is entitled to reinstatement with continuity of service and with full back wages. I order accordingly.

M. C. BHARDWAJ,

Dated the 13th January, 1982.

Presiding Officer,  
Industrial Tribunal Haryana, Faridabad.

No. 52                      Dated 15th January, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,  
Industrial Tribunal Haryana, Faridabad.

No. 9(1)82-6Lab./963.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute of between the workman and the management of M/s Tool Par and Machine Tool Co., Sector-6, Faridabad.

BEFORE SHRI M.C. BHARDWAJ PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,  
FARIDABAD

Reference No. 298 of 1978

*Between*

SHRI SUNDER LAL, WORKMAN AND THE MANAGEMENT OF M/S. TOOL PAR & MACHINE  
TOOLS CO. SECTOR-6, FARIDABAD.

*Present :—*

Shri S.R. Gupta, for the workman.

Shri A.J.S. Chadha, for the management.

AWARD

By order No. ID/FD/117-78/35186, dated 27th July, 1978, the Governor of Haryana referred the following dispute between the management of M/s. Tul Par & Machine Tools Co., Sector 6, Faridabad and its workman Shri Sunder Lal, to this Tribunal, for adjudication, in exercise of the powers conferred by clause(d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Sunder Lal was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed by my learned predecessor on 5th October, 1978 :—

1. Whether the workman lost his lien on the job by remaining absent ?
2. Whether the termination of services of the workman was justified and in order ?
3. If not, to what relief is he entitled ?

The management examined Smt. Pushpa Rani, Senior Assistant as MW-1 and Shri R.N. Tulsiani partner as MW-2. The workman examined Shri Purshotam Lal, Clerk of the Inspector of Factories Ballabgarh as WW-1, Dr. B.S. Chaudhry, Medical Officer, E.S.I., Faridabad as WW-2, Shri Ram Chander UDC, local office E.S.I. as WW-3 and the concerned workman as WW-4. Arguments were heard. Now I give my finding issue-wise :—

*Issues No. 1 and 2 :—* MW-1 stated that She had brought attendance and wages record which was maintained by her. The workman was appointed on 6th December, 1977 at Rs. 125 P.M. as wages. She did not know for what period the workman was appointed as learner. The workman remained absent from 3rd February, 1978 to 9th March, 1978. Thereafter the register contained word "left". Letter Ex. M-1 was sent to the workman. She further stated that he was continuing as a learner when he left last. She produced Ex. M-2 extract from attendance register. She stated that there were 27 workmen in the factory in the month of February, 1978 and there were two learners. After 9th March, 1978 a learner was appointed. In cross examination she replied that there were no standing orders in the factory, now she knew any rules regulations regarding the period of learning. The Engineer was competent to decide if the learner had acquired the job. She further replied that the workman was appointed to learn the job of an operator. She had signed Ex. M-1 for the Manager. She denied the suggestion that the medical certificate was given by the workman to her. MW-2 deposed that the workman was appointed,—vide Ex. M-3. He had applied for training and was appointed as learner. He was appointed as learner for two years as per Apprentice Act. The workman remained as learner till the end and was not absorbed against any regular post. The workman remained absent from 3rd February, 1978. He worked about six months. In cross examination he stated that he did not know as to who had filled in Ex. M-3. He denied the suggestion that word learner was written by the management and the workman was kept against a regular job. He was learning from Shri Vijay Bahadur operator. He did not know if the workman met with an accident on 3rd February, 1978. He could not tell if Ex. W-1 was replied.

WW-1 stated that he had brought summoned record. He had brought original of Ex. W-2 which was in the file and was received in his office. The matter was enquired into by Shri S.K. Gupta, Inspector of Factories on 16th February, 1978. He found that the workman had received minor injury on 3rd February, 1978 while working in the factory and by lifting a plate weighing about 25 K.G. which slipped from his hands and caused bruises on the two fingers of left hand. After getting First Aid he left the factory himself for E.S.I. hospital. In the report the result of enquiry is described as accident by chance and violation of rule 103 and section 45(3). No accident report was received in the office so the management was challaned. The same fact was recorded in a report in the shape of statement of Shri K.P. Singh Works Engineer of the management. The management was fined Rs. 200 by the Court of Judicial Magistrate Ballabgarh. He replied on court question that he did not know Shri K.P. Singh personally, nor had personal knowledge of the imposition of the fine but the same was described in his record. WW-2 stated that Shri Sunder Lal, S/o Shri Barkat Ram I.P. No. 2542221 was on medical leave from 4th February, 1978 to 16th February, 1978. Reason was that his left little finger was injured. Final fitness certificate was issued on 16th February, 1978. Two copies of certificates are issued, one for the local office and the other for the management. In cross examination he stated that he did not know about the treatment of the worker personally because the certificate was issued by Dr. S.C. Sharma but he had not worked ever with him. He did not know the whereabouts of Dr. Sharma. WW-3 stated that he had brought summoned record and according to which first medical certificate, dated 4th February, 1978 Shri Sunder Lal, IP No. 2542221 was received. According to it he was given rest from 3rd February, 1978. After it inter medical certificate was received on 11th February, 1978 and finally fitness certificate on 16th February, 1978. The workman was declared fit to resume duty on 17th February, 1978. The workman was entitled to temporary disablement benefit. But he had not received any such benefit from his office. In cross examination he stated that he was not posted in February, in the office, therefore, he could not tell who had entered the certificate into diary. WW-1—the concerned workman deposed that he was involved into an accident in the management factory. He was operating plainer machine. Accident occurred on 3rd February, 1978 when he was working. He remained under ESI treatment upto 16th February, 1978. Two copies of certificate were issued one for the workman and the other for the management. He was declared fit after two weeks. When he went to the management after fitness he was not taken on duty. He had submitted Exhibit W-4 from the conciliation office. In cross examination he replied that he worked with Shri Chander Pal, Operator but he was on day duty whereas the workman was on night duty. He performed the duty as that of an operator. Sometimes he was on day duty and Shri Chander Paul on night duty. He did not receive any appointment letter, nor he had submitted any application for appointment. His brother was working there. He admitted his signature on Exhibit M-1 and stated that in the first instance he was given Rs 125 p.m. and later on Rs. 140. He denied his signature on Exhibit M-4. He denied acceptance of Exhibit M-1 by him. He admitted his signature on Exhibit M-5. He suffered injuries at about 3.00 p.m. in the factory and he was relieved by the Doctor after giving 2-3 stitches. He was not kept as indoor patient, although he used to go daily for dressing. He had not gone to the factory for making leave application. He submitted his demand notice when the management refused him to take him back on duty. He had asked the Labour officer for reinstatement on his job. He was unemployed. He denied the suggestion that he left job of his own.

The representative for the management argued that the workman was appointed as a learner and he remained absent. He did not apply for leave. He had no lien on the job because he was a learner. He further

argued that record of illness was not lawfully proved. On the other hand the learned representative for the workman argued that the onus was on the management. The workman involved into an accident in the factory and when he was declared fit he was not taken on duty. The workman was an Operator and not a Learner. The circumstance of abandonment were not proved by the management. He cited 1979 ILLJ page 257.

The management has given evidence that the workman absent w.e.f. 3-2-78 whereas on behalf of the workman appeared Medical Officer, clerk of the Inspector of Factories and ESI Corporation local office. They have testified that the workman was on medical leave w.e.f. 3-2-78 to 16-2-78. It is further into evidence that the workman was involved into an accident while operating planer machine and had suffered injury. The management was challanged by the Inspector of Factories under the Factores Act. Under the circumstances, absence from duty was justified. According to Exhibit W-4 conciliation report the workman had given the version of his accident while on duty. The management has completely suppressed the fact of accident of the workman. It is an apathy that the workman instead of getting some relief or compensation for the accident lost his job by showing him absent. Therefore, under the circumstances, theory of absence put forward by the management is totally disproved by the evidence produced by the workman. His removal from job is quite unjustified. Therefore, both the issues are decided against the wmanagement.

*Issue No. 3.* The workman is entitled to reinstatement with continuity of service and with full back wages.

While answering the reference, I give my award that the termination of services of the workman was neither justified, nor in order. The workman is entitled to reinstatement with continuity of service and with full back wages. I order accordingly.  
Dated the 12th January, 1982

M.C. BHARDWAJ,  
Presiding Officer, Industrial  
Tribunal, Haryana, Faridabad.

No. 51 dated 15th January, 1982

Forwarded (four copies) to the Secretary to Government Haryana Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,  
Presiding Officer, Industrial  
Tribunal, Haryana, Faridabad.

**No. 91-82-5Lab 94.** -In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Greaves Enterprises Pvt. Ltd. Sector. 6, Faridabad.

**BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL  
HARYANA, FARIDABAD**

**Reference No. 437 of 1978**

*between*

**THE WORKMAN AND THE MANAGEMENT OF M/S GREAVES ENTERPRISES PRIVATE  
LIMITED, SECTOR 6, FARIDABAD**

*Present---*

Shri R.N. Roy, for the workmen.

Shri A.J.S. Chadha, for the management.

**AWARD**

By order No. ID/PD/44-78/42111 dated 18th September, 1978 the Governor of Haryana, perferred the following disputes between the management of M/s Greaves Enterprises Private Ltd., Sector-6, Faridabad and its workmen, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub section (1) of section 10 of the Industrial Disputes Act, 1947 :--

1. Whether workmen are entitled to the grant of bonus for the year 1975-76 and 1976-77 ? If so, with what details ?



2. Whether all the workmen should be supplied with uniforms ? if so, with what details ?
3. Whether workmen are entitled to washing allowance ? If so, with what details ?
4. Whether workmen should be supplied with shoes ? If so, with what details ?
5. Whether the wages of the workmen should be increased ? If so, with what details ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. After filling of the pleadings a settlement was filed by the management which was not accepted by the representative of the workmen. The following issues were framed :—

1. Whether the dispute is hit by settlement, dated 7th May, 1979 ? If so, to what effect ?
2. Whether the demands have been espoused by a substantial number of workmen ?
3. Whether workmen are entitled to the grant of bonus for the year 1975-76 & 1976-77? If so, with what details ?
4. Whether all the workmen should be supplied with uniforms ? If so, with what details ?
5. Whether workmen are entitled to washing allowance ? If so, with what details ?
6. Whether workmen should be supplied with shoes ? If so, with what details ?
7. Whether the wages of the workmen should be increased ? If so, with what details ?

The management adduced evidence on issue No. 1 and examined Shri Lal Chand Chabra, Accountant as MW-1, Shri Chaman Lal a workman as MW-2 and Shri Bhagwati another workman as MW-3. The workmen examined Shri Dev Singh as WW-1, Shri Gopal Dass as WW-2, and Shri Raj Singh as WW-3. Arguments were heard. I now give my findings as follows :—

*Issue No. 1.*—MW-1 deposed that settlement Exhibit M-1 was executed between the management and the workmen. He had also signed the same in addition to Shri Rajinder Kumar Jain, Factory Manager who was no longer in the service of the management. At the time of settlement there were about 27 workers in the factory. All of them had signed the same. Shri Jasbir Singh Suri who had signed on behalf of the management was also no longer in the service. He further stated that the settlement was read over to all the workmen. In cross-examination he stated that the settlement was signed in the factory on 7th May, 1979. Out of signatory workmen about 50 per cent were still in the service of the management. MW-2 stated that the settlement bears his signature at point "X". All the workmen of the factory were present at the time of the settlement which was read over to them. The settlement had been implemented and the workmen had received benefits according to the settlement. In cross-examination he stated that he was working w.e.f. 1st January, 1979 and demand notice was given on 5th July, 1979. MW-3 stated that he was working in the factory from December, 1978. Settlement Exhibit M-1 bears his signature at point "Y". All the workmen had signed the settlement after it was read over to them. All the workmen had received benefits of the settlement.

WW-1 stated that settlement Exhibit M-1 bears his signature at serial No. 2. He had signed the same for raising of wages under the Minimum wages Act. He had not withdrawn the case pending before the Tribunal. In cross-examination he stated that he had signed settlement about 11/2 years back. After the settlement there was a rise in wages in the shape of increment.

According to the settlement the workmen at night duty got Rs. 2, Rs. 3 as night allowance. He admitted that at the time of execution of the settlement there were 27 workmen in the factory and all of them had signed. The settlement was not written after consultation with the workmen. Exhibit M-2 also bears his signature at Serial No. 1. WW-2 stated that he had signed Exhibit M-1 at serial number 20 but the contents of it were not read over to him. In cross-examination he stated that he did not know the wages prior to the settlement. He admitted that he had received bonus after execution of Exhibit M-1. He admitted that a copy of settlement was given to Shri R. N. Roy representative of the union. He had not told him about the contents of settlement. WW-3 also corroborated the statement of WW-2 and stated that he had signed at serial number 6. In cross-examination he admitted his signature on Exhibit M-2. He admitted that after the settlement there was a rise in the wages in the shape of increment. An arrear was also paid to the workmen.

The learned representative for the management argued that all the witnesses of the workmen admitted their signatures on the settlement and the same had been implemented.

I find that settlement Exhibit M-1 was executed during the pendency of the present reference. According to the settlement the workmen were given increment and *ad hoc* increase in the wages. They were

also given night allowance. According to the settlement bonus was not payable for the years 1975-76 and 1976-77. I find that it was signed by 27 workmen and it is admitted by WW-1 and WW-2 that all the workmen had signed the settlement. The execution of the document is not denied, rather they say that a copy of the same was given to Sri R. N. Roy by the workmen after its execution but he had not told them about the contents of the settlement. After the admission of a document by the workmen it was upon them to show that the same was executed under some coercion or adverse circumstances. Out of 27 workmen only 3 workmen had appeared to challenge the settlement but they have also admitted the receipt of copy of settlement. I am of the opinion that when a majority of workmen reach a settlement with the management and receive benefits out of the same a few cannot disturb the same. Industrial peace and harmony desires that mutual settlement be respected by the workmen. I, therefore, decide issue No. 1 in favour of the management.

*Issues No. 2 to 7.*—As per findings given by management No. 1 issue does not need a decision.

The case of the workmen (all issues No. 1), the workmen are not entitled to any relief in this reference.

Dated, the 6th January, 1982.

M. C. BHARDWAJ,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

No. 50, dated the 15th January, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

Dated, the 6th January, 1982.

M. C. BHARDWAJ,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

No. 9(1)82-6Lab./965.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Municipal Committee, Mohindergarh.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL  
HARYANA, FARIDABAD

Reference No. 82 of 1980

between

THE WORKMEN AND THE MANAGEMENT OF M/S MUNICIPAL COMMITTEE,  
MOHINDERGARH

*Present :*

Shri S. R. Gupta, for the workmen.

Shri Rameshwar Dayal, for the management.

#### AWARD

By order No. ID/GGN/26-80/60095, dated 15th December, 1980, the Governor of Haryana referred the following disputes between the management of M/s Municipal Committee, Mohindergarh and its workmen to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

- (1) Whether all the Octroi Moharirs should be allowed the grade of Rs. 110—4—150—5—210 w.e.f. 1st January, 1980 ? If so, with what details ?
- (2) Whether all the Peons should be allowed the grade of Rs. 90—2—110—3—160 w.e.f. 1st January, 1980 ? If so, with what details ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties issues were put as per order of the reference. The workmen examined Sri Ravan Singh, General Secretary, Municipal Employees Union, as WW-1 and the management examined Shri Ramashwar Dayal, Octroi Superintendent as MW-1. Arguments were heard. I now give my finding issues-wise :—

*Issue No. 1.*—WW-1 deposed that there were 10 Octroi Moharirs in the municipality and they were given grade of Rs. 80—2—90/3—120. Exhibit W-2 was copy of circular letter issued by the Government Exhibit W-3 copy of judgement passed by the High Court Exhibit W-4 and Exhibit W-5 were copies of grades allowed in other municipalities. In cross-examination he admitted that the revised grades had been sent to the Deputy Commissioner, Narnaul for sanction.

MW-1 stated that the Municipal Committee was paying higher grades than given in the notification Exhibit M-1. Municipal Committee had revised grade of Chungi Moharirs to Rs. 400—660 and a provision was made in the annual budget. He filed a copy of budget Exhibit M-2. He filed Exhibit M-3 and copy of an award Exhibit M-4 in the case of Mahan Municipality. In cross-examination he admitted that letter Exhibit W-2 was received from the Government and the budget was prepared on the basis of the same. Revised of wages was proposed w.e.f. 1st August, 1980. At that time there were 9 Octroi Moharirs. He stated that the financial position of the municipality was not good.

I have gone through the documents placed by the parties on the file. Exhibit M-1 a notification, dated 8th April, 1976 is about minimum wages of Moharirs. After the notification there had been many changes in the minimum wages of employees. State Government had issued circular copy Exhibit W-2 in which the grade of Clerks, Accounts Clerk and Octroi Moharirs were made identical. The letter is dated 16th October, 1980. It is in the letter that the grades may be revised provided that the finances of the Committee permit. According to Exhibit M-2 Municipal Committee revised the existing scale of pay per Government instructions. As the Municipal Committee had accepted the Government instructions and revised the grades of Octroi Moharirs w.e.f. 1st August, 1980. The plea of financial condition is of no avail because all the other categories of the municipal staff were allowed payment of higher grades. It was not shown by the municipality as to why only Moharirs were chosen for affecting economy. It would have been understandable if higher salaried officials had sacrificed a part of their salary to improve municipal finances. By a recent notification I find that the State Government has created District and State Level Municipal services. I find that Octroi Moharirs are treated at par with the clerks in respect of grades and scales of pay. In the circumstances, I find that the Octroi Moharirs are entitled to the new scale w.e.f. 1st August, 1980.

*Issue No. 2.*—It is into evidence of MW-1 that the grade of Peons was revised by the municipality and there was no controversy about upward revision. However, on the basis of discussion above the Peons will also be entitled to the revision of grade w.e.f. 1st August, 1980 in case they were not paid at the revised scale from some earlier date.

While answering the reference I give my award that all the Octroi Moharirs and all the Peons are entitled to new grades w.e.f. 1st August, 1980. I order accordingly.

Dated the 6th January, 1982.

M. C. BHARDWAJ,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

No. 49, dated the 15th January, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

H. L. GUGNANI,  
Commissioner and Secretary to Government, Haryana,  
Labour and Employment Department.